

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI

**v.
JAMES EARL LEE**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD78404

DATE: May 3, 2016

Appeal From:

Saline County Circuit Court
The Honorable Dennis A. Rolf, Judge

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Attorneys:

Gregory L. Barnes, Jefferson City, MO, for respondent.

Samuel E. Buffaloe, Columbia, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

STATE OF MISSOURI,

RESPONDENT,

v.

JAMES EARL LEE,

APPELLANT.

No. WD78404

Saline County

Before Division Three: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Appellant James Earl Lee ("Lee") was convicted by the Circuit Court of Saline County of felony possession of a controlled substance, misdemeanor possession of a controlled substance, felony resisting arrest, and misdemeanor failure to properly maintain a vehicle license plate. Lee appeals his convictions, alleging the circuit court erred in failing to suppress all evidence of the drugs found because the search which set in motion the discovery of the drugs violated his Fourth Amendment rights. Lee also argues that there was insufficient evidence to convict him of felony resisting arrest.

WE REVERSE

Division Three holds:

- (1) The trial court did err in failing to exclude the drugs found on Lee. A state trooper searched Lee for drugs during a traffic stop. During the search, Lee fled on foot. Following a short chase, Lee was apprehended and again searched at which point the trooper found him in possession of cocaine and marijuana. The first search of Lee's person was not permissible under any recognized exception to the Fourth Amendment. Lee's flight did not purge the taint of the first search from second search. Therefore, we reverse Lee's convictions for Count I, Possession of Controlled Substance Except 35 Grams or Less of Marijuana, and Count II, Possession of Up to 35 Grams Marijuana, and order Lee to be discharged on these counts.
- (2) There was insufficient evidence presented to the circuit court to find Lee guilty of felony resisting arrest. At the time Lee fled, the state trooper merely intended to detain Lee and had no reason to believe Lee had committed a felony. Therefore, we reverse Lee's conviction for Count III, felony resisting arrest and order Lee to be discharged on this count.

Opinion by Gary D. Witt, Judge

May 3, 2016

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